

Supreme Court, U.S.  
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05-634 NOV - 8 2009

No. OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

MAHESH C. SIKKA, *pro se*  
*Petitioner,*

v.

DONALD H. RUMSFELD  
Department of Defense  
U.S. Defense Commissary Agency  
*Respondent,*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

After providing nineteen years of federal service as an architect, the Petitioner's employment was wrongfully terminated as a result of engaging in protected EEO activity. Based on his termination, the Petitioner filed two Civil Actions containing six EEO complaints all in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, and the Rehabilitation Act, 29 U.S.C. §§ 791, 794(a). The Petitioner filed two Civil Actions. The District Court dismissed the Petitioner's Civil Action 1 by granting a Motion for Summary Judgement to the Respondent. The District Court also dismissed the Petitioner's Civil Action 2 on the grounds of *Res judicata*.

The Fourth Circuit affirmed the District Court's decisions. The Petitions for Rehearing and Petitions for Rehearing *En Banc* were denied. The Fourth Circuit's decisions in these Civil Actions stands alone and directly conflicts with other Courts of Appeal decisions. In addition, the ramifications of the 4<sup>th</sup> Circuit decision are significant. Left undisturbed, it would pre-empt the federal government regulations, as it will harm the Petitioner and others whose request to exhaust legal administrative remedies for their EEO complaints are unlawfully denied. Every employee nationwide, similar to the Petitioner, will be punished because of the abuse of discretion by the Court. In this case, the Court rendered a decision for the Petitioner removal knowing that several of his EEO complaints which led to his removal action were pending for investigation and unlawfully denied his rights to exhaust his legal administrative remedies. This decision overrules previous Supreme Court decisions.

The central issues in this case is that during Civil Action 1, the District Court explicitly acknowledged that the Petitioner did not bring all of the claims together, as four of his EEO complaints contained in Civil Action 2, which led to his removal action were pending for investigation, as he never exhausted his legal administrative remedies. Whether the District Court has a jurisdiction to unlawfully deny the petitioner a Motion requesting to exhaust his legal administrative remedies is the central issue in this case.

These four EEO complaints involve wrongfully placing the Petitioner on a Performance Improvement Plan, inaccurate progress reports, etc. Instead of granting a Motion for a stay for Civil Action 1, whether the District Court unlawfully granted a Motion for Summary Judgement to the Respondent and dismissed the Petitioner's Civil Action 1 is another key issue in this case.

Five questions are presented:

1. Whether during Civil Action 1 the District Court took unlawful steps denying the Petitioner a Motion for stay to bring all of the claims together and to exhaust his legal administrative remedies for his pending EEO complaints contained in Civil Action 2 before rendering a judgment for Civil Action 1, *knowing* that denying a Motion for stay for Civil Action 1 will jeopardize his future Civil Actions on the grounds of *Res judicata*. Whereas the law requires that the District Court should not have denied the Motion.
2. Instead of granting the Petitioner a Motion for stay for Civil Action 1, whether the District Court abused their discretion granting a Motion for Summary Judgement to the Respondent and dismissing the Petitioner's Civil Action 1 when the District Court explicitly acknowledged that several of his EEO complaints which led to his removal action are pending for

investigation and unlawfully denied his rights to exhaust his legal administrative remedies as it is forbidden by law to render a judgment in a piecemeal manner. As a matter of fact, the decision of the EEO complaints contained in Civil Action 2 which led to the Petitioner's removal should be rendered before a decision for EEO complaints contained in Civil Action 1.

3. Whether the District Court should have put a stay of the judicial proceedings for Civil Action 1 until the Petitioner had received the outcome of the legal administrative remedies for the EEO complaints contained in Civil Action 2, as it was of paramount importance to determine whether placing the Petitioner on the Performance Improvement Plan was legal.

4. Whether dismissing Civil Action 2 on the grounds of *Res judicata* would have been moot if the court and the EEOC would not have made an error for granting a Motion for Summary Judgement in favor of the Respondent for Civil Action 1 when the law required a stay for Civil Action 1 because the District Court explicitly acknowledged that the Petitioner has not exhausted his legal administrative remedies for the four EEO complaints contained in Civil Action 2. Whether the Petitioner should be punished because of the Court's unique errors, which will also have national importance on all employees and previous court rulings.

5. Whether the Petitioner's Civil Actions should be dismissed or reopened and the Petitioner's removal should not be withheld because of abuse of discretion of the Court taking unlawful steps to pre-empt the federal government regulations which will also impact all employees nationwide, including the Petitioner.

**LIST OF PARTIES**

A list of all the parties is as follows:

MAHESH C. SIKKA, *pro se*,

DONALD H. RUMSFELD

Department of Defense

U.S. Defense Commissary Agency

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## STATEMENT OF JURISDICTION

The Petitioner filed the following two Civil Actions:

### **Civil Action 2 ( 05-1121, 3:03cv895)**

The Fourth Circuit's unpublished opinion affirmed the judgement of the District Court on June 8, 2005 (*See* Appendices B-D). The Petition for Rehearing and *En Banc* was denied on Aug. 16, 2005 (*See* Appendix A).

### **Civil Action 1 (03-1777, 3:02cv235)**

The Fourth Circuit's unpublished opinion affirmed the District Court's decision on June 2, 2004 (*See* Appendices F-G). The Petition for Rehearing and *En Banc* was denied on Aug. 9, 2004 (*See* Appendix E).

## STATEMENT OF THE CASE

The Petitioner, Mahesh C. Sikka, was employed as a GM-808-13 Architect by the Defense Commissary Agency [hereinafter referred to as "DeCA"] or its predecessor organization, U.S. Army Troop Support Agency (TSA). He was the first professional architect for TSA. The Petitioner had an outstanding performance record but even after providing nineteen years of federal service, the Petitioner's employment was wrongfully terminated as a result of retaliation for filing several EEO complaints. The petitioner has a Master's of Architecture from Pratt Institute, N.Y. in 1976 and is a professionally licensed architect in Virginia. The petitioner was also the only male minority-licensed architect who was a member of the Board of Professional Excellence for DeCA.

1. The Petitioner filed the following two Civil Actions containing a total of six EEO complaints alleging (1) discrimination based on race and national origin, (2) retaliation for engaging in protected EEO activity against DeCA or its

predecessor organization, (3) handicap discrimination, (4) disparate treatment, (5) preferential treatment to non-minority employees, and (6) harassment creating a hostile work environment all in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, and the Rehabilitation Act, 29 U.S.C. §§ 791, 794(a) [Petitioner's oral arguments Ex. A, C- F].

**Civil Action 1** contained two EEO complaints which were 96-LE-MS-04 and 98-LE-MS-01. The District Court explicitly acknowledged that the Petitioner neither brought all of the claims together nor exhausted his legal administrative remedies for his four EEO complaints contained in Civil Action 2. Instead of granting a Motion for a stay for Civil Action 1, the Court dismissed the case unlawfully by granting a Motion for Summary Judgement to the Respondent.

**Civil Action-2** contained four EEO complaints which were 96-LE-MS-05, 97-LE-MS-01, 97-LE-MS-02, and 97-LE-MS-03. The District court dismissed this case on the grounds of *Res judicata*.

2. During Civil Action 1, the Petitioner made it clear to the Court that his four EEO complaints contained in Civil Action 2 which led to his removal from the federal service are pending for investigation by the Agency and the Petitioner did not exhaust his legal administrative remedies for the four EEO complaints contained in Civil Action 2 (Petitioner's Civil Action-1, p.18, para. 93).

3. The Petitioner filed a Motion to the Merit Systems Protection Board (MSPB) requesting a stay for two of his EEO complaints contained in Civil Action 1, because the Petitioner did not exhaust his legal administrative remedies for the four EEO complaints contained in Civil Action 2. Furthermore, a decision for EEO complaints contained in Civil Action 2 which led to the Petitioner's removal action should have been

rendered before a decision for EEO complaints contained in Civil Action 1. The EEO complaints contained in Civil Action 1 would have been moot if the Petitioner received a favorable decision for EEO complaints contained in Civil Action 2.

4. The MSPB and the Court unlawfully denied the Petitioner's request for stay, request to combine all of the claims, and even his request to exhaust all legal administrative remedies for the four EEO complaints in Civil Action 2. The Court issued the judgment for the two EEO complaints contained in Civil Action 1 knowing that the decision of Civil Action 2 was still pending. It is of paramount importance for the MSPB and the Courts not to deny the Petitioner's request for stay and in this case, should have waited for the decision for the EEO complaints contained in Civil Action 2 before rendering a decision for the EEO complaints contained in Civil Action 1.

5. The District Court unlawfully disregarded the Petitioner's Motion for stay and took unlawful steps by granting a Motion for Summary Judgement in favor of the Respondent and dismissed Civil Action 1 knowing that the Petitioner neither brought all of his claims together nor exhausted his legal administrative remedies for his four EEO complaints contained in Civil Action 2.

6. The Agency amended the Petitioner's EEO complaint from Civil Action 1 with two EEO complaints from Civil Action 2 requesting to process all four complaints claiming that they all involve the same set of circumstances. In Civil Action 2, one of the EEO complaints involved the placement of the Petitioner on a Performance Improvement Plan. The other EEO complaint comprised of inaccurate progress reports. Civil Action 1 involved the Petitioner's removal from the Government.

7. The MSPB unlawfully denied the Agency's request of amendment to include all the claims. The District Court and Court of Appeals were well aware of the Agency's attempt to combine complaints and unlawfully granted a Motion for Summary Judgment in favor of the Respondent. The Courts failed to provide a stay for EEO complaints contained in Civil Action 1 so that the Petitioner could exhaust his legal rights for the EEO complaints contained in Civil Action 2.

8. In response to Civil Action 1, the "respondent admitt[ed] that there [were] four EEO complaints currently pending." [Ex. C., Defendant's response to Petitioner's Civil Action 1 of April 10, 2002, Ex. C, p.11, para. 93]. -Ironically, four days later, after the Respondent's admission, he reverted his statement and dismissed the Petitioner's four EEO complaints stating,

"Upon review of the Civil Action, (Case Number 3:02CV235) and the complete files of the subject complaints, I find that **all** allegations of the subject complaints ... have been included as part of this filing," [Defendant Ex. 6], [Dist. Court report and recommendation, para. 5).

9. This required the Petitioner to file Civil Action 2. The Respondent submitted a Motion for Summary Judgment and brought to the District Court's attention that **all** of the Petitioner's allegations pertaining to Civil Action 2 were not included in Civil Action 1 and further stated that:

"Despite the fact that the Appellant never amended his complaint in the prior action to include the dismissed complaints, see Complaint, p. 9, ¶ 3, two of the complaints were, in fact, litigated. Compare Exhibit 2, pp. 6, 8 at ¶¶ 17 and 20 with Exhibit 3, p. 7, 8 at ¶¶ 17 and 20